

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 287

Docket No. MC2017-77

Competitive Product Prices
Priority Mail Contract 287 (MC2017-77)
Negotiated Service Agreement

Docket No. CP2017-104

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL CONTRACT 287 TO
COMPETITIVE PRODUCT LIST

(January 25, 2017)

The Public Representative hereby provides comments pursuant to the Commission's Notice initiating this docket.¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 287 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail shipping services Contract 287, and proposed changes to the Mail Classification Schedule competitive product list with the additions underlined. The Postal Service also

¹ PRC Notice Initiating Docket No. MC2017-77/CP2017-104, December 17, 2017

² Request of the United States Postal Service to Add Priority Mail Contract 287 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 13, 2017 (Request).

filed under seal an unredacted version of Governor's Decision No. 11-6 and Contract 287, and supporting financial data estimating the contract value during the first year.

According to the Postal Service, Priority Mail Contract 287 is a competitive product featuring rates "not of general applicability" within the meaning of 39 U.S.C. § 3632(b) (3). Request at 1. The Postal Service also maintains that the prices and classification changes applicable to Contract 287 are supported by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 287 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date for Contract 287 is 2 business days following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 3 (Article III). The contract will expire 1 year from the effective date. However, it will be automatically renewed for two (2) successive 12-month periods, unless either party terminates the contract on 60 days' prior written notification, or other specific events. *Id.*, Attachment B at 3 (Article IV).

COMMENTS

The Public Representative has reviewed the Postal Service's Request, the Statement of Supporting Justification, as well as Contract 287 and the financial data filed under seal with the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Contract 287 should be classified as a competitive product and added to the competitive product list. In addition, it appears that Contract 287 should generate sufficient revenues to cover costs and thereby satisfy 39 U.S.C. § 3633(a).

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 286 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement of Supporting Justification (Statement) makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Contract 287 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices for Contract 287 should generate sufficient revenues to cover costs during the initial term of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a). In addition, while Contract 287 is expected to remain in effect for a period of 1 year, it will be automatically be renewed for two (2) successive 12-month periods, during which, the contract contains a mechanism for the upward annual adjustment of prices.

Although the Postal Service’s financial model which accompanies this request indicates that Contract 287 should cover its attributable costs in its first year, the contract is also somewhat unusual in that it contemplates same- day delivery and its costing is also unusual, in that its revenues and costs are calculated on a per-stop basis as versus a per-piece basis. However, the Contract also contains an adjustment clause

which will permit adjustments to the contract pricing arising out of (A) superior or inferior performance, (B) substantial change to delivery density, or (C) any other relevant characteristics of the Contract Packages. Attachment B at 2.

Finally, the Postal Service must file revenue and cost data for Contract 287 in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for Priority Mail Contract 287 in a future Annual Compliance Determination (ACD) report for compliance with 39 U.S.C. § 3633(a). The Commission, as it has done in other dockets, should require the Postal Service to report contract specific volumes, costs and workhours on a quarterly basis for the duration of this contract.⁴

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁴ See PRC Order No. 3071, February 16, 2016, Docket Nos. MC2026-41/CP2016-50